IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 4TH APRIL 2007 / 14TH CHAITHRA 1929

Crl.MC.No. 685 of 2007()

CRMP.374/2007 of J.F.C.M COURT-I, PERINTALMANNA

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PETITIONER: PETITIONER

YOUNUS.M, S/O MUHAMMED ALI,
MATHADAN HOUSE, KOLATHAN, P.O.ANGADIPURAM VIA.,
MALAPPURAM DISTRICT.

BY ADV. SRI.DEVIDAS.U.K

RESPONDENTS: RESPONDENT/STATE

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1. STATE OF KERALA REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

2. THE REVENUE DIVISIONAL OFFICER,
PERINTALMANNA.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 04/04/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.NO.685 OF 2007

Dated this the 4th day of April, 2007.

ORDER

The petitioner is the owner of a vehicle which is allegedly involved in illicit transportation of sand. The petitioner applied before the learned Magistrate for release of the vehicle to his custody. The learned Magistrate, by the impugned order, directed release subject to conditions. There is a direction that the petitioner shall deposit an amount of Rs.25,000/- in addition to execution of a bond for Rs.1,00,000/- with two solvent sureties each for the like sum.

2. The short grievance made by the petitioner is that the condition that he should deposit an amount of Rs.25,000/- is too onerous and he is unable to comply with that condition. The learned counsel for the petitioner submits that even though the order was passed as early as on 12/02/2007, the petitioner has not been able to take advantage of the said order and claim release as he was not able to raise the amount of Rs.25,000/-. The vehicle is unnecessarily exposed to sun and rain and suffering damage and deterioration. The District Collector has

not passed any orders so far under Section 23 or Rule 27 and 28 of the Protection of River Banks and Regulation of Removal of Sand Act 2001. In these circumstances, the learned counsel for the petitioner prays that leniency may be shown and unnecessary further loss and deterioration of the vehicle may be avoided by directing release of the vehicle to the petitioner altering the said condition No.2.

3. The learned Public Prosecutor opposes the said application. The learned Public Prosecutor submits that the vehicle in the instant case is involved in an earlier instance of violation of the provisions of the Act and in these circumstances no leniency may be shown to the petitioner.

4. Having considered all the relevant inputs, I am satisfied that the condition imposed can be modified. In coming to this conclusion, I take note of the fact that admittedly the District Collector has not passed any orders under Section 23 read with Rule 27. I further take note of the fact that the petitioner appears to be genuinely disabled from complying with the condition and has not been able to claim release of the vehicle even though an order was passed on 12/02/2007. I do

further take note of the anxiety of the law to avoid such damage and deterioration to the vehicle as reflected in the pronouncement of the Supreme Court in Sunderbhai Ambalal Desai v. State of Gujarat [AIR 2003 SC 638].

5. In the result, this petition is allowed in part. Condition No.2 in Annexure II order shall stand modified. All other conditions shall continue to remain in force. Condition No.2 is modified and it is directed that the petitioner need deposit only an amount of Rs.15,000/- (Rupees fifteen thousand only). It is made clear that the petitioner shall be liable to comply with the directions, if any, issued under Section 23 read with Rules 27(3) of the Act and Rules.

R.BASANT
JUDGE

jsr